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In the
Supreme Court of the United States

OCTOBER TERM, 1957

No. 163

UNITED STATES STEEL CORPORATION, *Appellant,*

vs.

STATE OF WASHINGTON.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

STATEMENT AS TO JURISDICTION

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INDEX

	Page
JURISDICTIONAL STATEMENT	1
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Statement of the Case	4
The Questions Are Substantial	8
A. The Question of Apportionment Is Substantial	8
B. The Question of Discrimination Is Substantial	15
Conclusion	19
APPENDIX A—Washington Supreme Court Decision	21
APPENDIX B—Opinion of the Superior Court for Thurston County	24
APPENDIX C—Washington Supreme Court Judgment	25
APPENDIX D—The Statute	26

TABLE OF CASES

American Manufacturing Co. v. St. Louis, 250 U.S. 459 (1919)	9
Bass, Ratcliff & Gretton, Ltd., v. State Tax Commission, 266 U.S. 271 (1924)	10
B. F. Goodrich Co. v. State, 38 Wn.(2d) 663, 231 P. (2d) 325 (1951)	9
Bloxom v. Henneford, 193 Wash. 540, 76 P.(2d) 586 (1938)	9
Central Greyhound Lines v. Mealey, 334 U.S. 653 (1948)	10
Columbia Steel Co. v. State, 30 Wn.(2d) 658, 192 P. (2d) 976 (1948)	16, 17
Department of Treasury v. Ingram-Richardson Mfg. Co., 313 U.S. 252 (1941)	11, 14
Department of Treasury v. Wood Preserving Corp., 313 U.S. 62 (1941)	14

Page

Field Enterprises, Inc., v. State of Washington, 47 Wn.(2d) 852, 289 P.(2d) 1010 (1955); aff'd. 352 U.S. 806 (1956) 10, 11, 12
Fisher's Blend Station v. Tax Commission, 297 U.S. 650 (1936) 9
Freeman v. Hewit, 329 U.S. 249 (1946) 3, 9
Gwin, White & Prince, Inc., v. Henneford, 305 U.S. 434 (1939) 9, 15
Hans Rees' Sons v. North Carolina ex rel. Maxwell, 283 U.S. 123 (1931) 12
Interstate Oil Pipeline Co. v. Stone, 337 U.S. 662 (1949) 13
J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307 (1938) 10
Memphis Steam Laundry Cleaner, Inc., v. Stone, 342 U.S. 389 (1952) 3
Norton Co. v. Department of Revenue, 340 U.S. 534 (1951) 10, 11, 12
Puget Sound Stevedoring Co. v. Tax Commission, 302 U.S. 90 (1937) 9
Railway Express Agency, Inc., v. Virginia, 347 U.S. 359 (1954) 3
Richfield Oil Corp. v. State Board of Equalization, 329 U.S. 69 (1946) 3
United States Steel Corporation v. State of Washington, 151 Wash. Dec. 200, 316 P.(2d) 1099 (1957) 1, 7, 12
Western Live Stock v. Bureau of Revenue, 303 U.S. 250 (1938) 8, 9, 15

STATUTES AND OTHER AUTHORITIES

Laws of 1935, Chap, 180, Title II (Wash.) 2
Laws of 1935, Chap. 180, §6 (Wash.) 16
Laws of 1950, Chap. 5, §2 (Wash.) 17
RCW 2.04.220 (1951) 2
RCW 82.04.220 (1951) 2, 9, 12
RCW 82.04.240 (1951) 2
RCW 82.04.250 (1951) 2
RCW 82.04.270 (1951) 2

Page

RCW 82.04.295 (1951) 2
RCW 82.04.430(6) (1951) 2
RCW 82.04.440 (1951) 2
RCW 82.32.180 ..... 2, 6
28 U.S.C. §1257(2) (1952) 3
United States Constitution, Art. I, §8, Cl. 3
2, 3, 4, 6, 8, 22
United States Supreme Court Rule 13(1) 2

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

STATEMENT AS TO JURISDICTION

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of the State of Washington entered in this action on December 3, 1957, affirming the judgment of the Superior Court of the State of Washington for Thurston County, and submits this statement in support of its contention that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington has not yet been officially reported; it appears unofficially at 151 Wash. Dec. 200, 316 P.(2d) 1099 (1957), and is annexed hereto as Appendix A. The opinion of the Superior Court of the State of Washington for Thurston County is not reported officially or unofficially, but is annexed as Appendix B.

JURISDICTION

Appellant, United States Steel Corporation, commenced this action in the Superior Court of the State of Washington pursuant to Section 82.32.180 Revised Code of Washington to recover business and occupation taxes and interest thereon assessed against it by the State for the privilege of engaging in business activities within Washington. Appellant sought to recover these taxes on the ground that the taxing statute involved discriminated against interstate commerce and that the taxes were not apportioned to exclude appellant's activities in interstate commerce in violation of the Commerce Clause of the United States Constitution. The judgment from which this appeal is taken is the judgment of the Supreme Court of the State of Washington entered December 3, 1957, which is attached hereto as Appendix C. Judgments of that court are final on all parties. RCW 2.04.220 (1951). Notice of appeal to this Court was filed in the Supreme Court of the State of Washington on February 27, 1958. Time for docketing the case with this Court was enlarged for a period extending to and including July 15, 1958, by an order of the Supreme Court of Washington entered February 27, 1958, pursuant to Rule 13(1) of this Court.

The statute drawn in question on the ground of being repugnant to the United States Constitution is Chap. 180, Title II, Laws of 1935, as amended; RCW 82.04.220, 82.04.240, 82.04.250, 82.04.270, 82.04.295, 82.04.430(6), and 82.04.440 (1951). The statute provides in part at RCW 82.04.220 (1951):

> "*Business and Occupation Tax Imposed.* There is levied and shall be collected from every person a

> tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

The pertinent statutory provisions are lengthy and therefore are set forth in Appendix D.

The decision of the highest court of the State of Washington sustained the validity of the foregoing statute as applied in this case; therefore, this Court has jurisdiction on appeal. 28 U.S.C. §1257(2); *Railway Express Agency, Inc., v. Virginia,* 347 U.S. 359 (1954); *Memphis Steam Laundry Cleaner, Inc., v. Stone,* 342 U.S. 389 (1952); *Richfield Oil Corp. v. State Board of Equalization,* 329 U.S. 69 (1946); *Freeman v. Hewit,* 329 U.S. 249 (1946).

QUESTIONS PRESENTED

The following questions are presented by this appeal:

(1) **APPORTIONMENT.** Does the Commerce Clause of the United States Constitution (Article I, §8, Clause 3) permit the State of Washington to levy a tax on the privilege of engaging in business activities measured by the entire gross proceeds of appellant's interstate sales to Washington customers without apportionment to exclude that portion of the gross proceeds of such sales which appellant has shown are attributable to appellant's business activities outside the State of Washington?

(2) **DISCRIMINATION.** Does the State of Washington discriminate against interstate commerce in violation of the Commerce Clause of the United States Con-

stitution (Article I, §8, Clause 3) by taxing both the privilege of manufacturing and the privilege of selling within the state where each tax is measured by the entire gross proceeds of sales, but persons taxable as sellers are exempted from the tax on manufacturers, thus insuring that persons engaged in business locally pay but one tax on their combined Washington manufacturing and selling activities, while persons engaged in interstate commerce, subject to taxation for the privilege of engaging in business not only in Washington, but also in the state of manufacture, are subject to multiple taxation?

STATEMENT OF THE CASE

The sales transactions involved in this action were those of Columbia Steel Company, a Delaware corporation, having its principal office in San Francisco, California. The sales were made between August 1, 1950, and December 31, 1951. Thereafter, as the result of corporate mergers, the interest of Columbia Steel Company in this action and the relief sought thereunder was vested in the appellant, United States Steel Corporation. For convenience, both companies will be referred to as "appellant" since the merger is not significant for the purposes of this appeal.

Appellant's business was that of manufacturing and marketing iron and steel products and by-products. None of these products was manufactured in the State of Washington. Approximately 25% of the appellant's gross proceeds of sales to Washington customers was attributable to sales of products manufactured by appellant in its mills located in the State of California.

All other proceeds of sales to Washington customers were derived from goods manufactured outside the State of Washington by corporations which were separate entities but were under common control with appellant. The activities of all producing mills, including those owned by appellant, were subject to the taxation and revenue laws of the respective states in which the mills were located.

Appellant maintained only one office in the State of Washington. It was located in Seattle to provide liaison between customers in Washington, Alaska and portions of Idaho and the producing mills. The only product warehoused in this state by appellant was wire rope, in small quantities. Local sales from this stock of goods accounted for less than 1¼% of appellant's total volume of sales to Washington customers, and taxes paid on these sales are not involved in this action. Interstate sales of the same commodity (wire rope) accounted for less than 2¼% of the taxpayer's total sales to Washington customers. All other sales to Washington customers were interstate sales of products not available in a Washington warehouse, and, whether manufactured by appellant or not, were transported by common carriers directly to the purchasers within the State of Washington from the states in which the producing mills were located. The products were priced at the producing mill and shipped f.o.b. the point of shipment, and the sales were made upon terms under which title passed to the customer upon delivery to the common carrier at the place of shipment and the merchandise was thereafter at the customer's risk.

Appellant paid when due a business and occupation tax upon the gross proceeds of sales of wire rope made from local warehouse stocks. As to all interstate sales, no tax was paid because the taxpayer asserted its rights under the Commerce Clause, United States Constitution.

The Washington State Tax Commission refused to grant the protection of the Commerce Clause to these interstate sales and failed to apportion the proceeds to permit a partial refund. On November 29, 1951, and again on August 11, 1955 (during the pendency of this action) the Tax Commission levied a deficiency or additional assessment against the appellant for business and occupation taxes measured by the entire gross proceeds of these sales in interstate commerce. The additional assessment did not apportion to any other state any part of the gross proceeds of such sales and did not, in arriving at the tax represented by such additional assessment, deduct from the measure of the tax any portion of the gross proceeds of such sales.

The Tax Commission failed to make an apportionment even though all of the records of the taxpayer necessary for such an apportionment were available to the Tax Commission.

The appellant paid the taxes assessed, together with interest thereon, and appealed from the Tax Commission deficiency or additional assessment to the Superior Court of the State of Washington as permitted by RCW 82.32.180. Appellant's complaint and notice of appeal in the trial court alleged in part:

"The aforesaid additional assessment was based

> upon a tax measured by amounts derived from business which the State of Washington is prohibited from taxing under Article I, §8, Clause 3 of the Constitution of the United States of America * * *."

The case was tried in the Superior Court on stipulated facts sufficient to provide the court with the information generally employed by other taxing jurisdictions in establishing apportionment formulae. Furthermore, the appellant offered, at the trial, to present whatever additional facts the trial court might desire to bring about an apportionment. Both the appellant and respondent argued to the trial court the issues of apportionment and discrimination which are raised on this appeal. The trial court and the Supreme Court of the State of Washington rejected both of these contentions and upheld the validity of the tax. With respect to discrimination the Supreme Court of the State of Washington held, at 151 Wash. Dec. 200, 201, 316 P.(2d) 1099, 1100 (1957):

> "Its contention that the business and occupation tax violates Art. I, §8, of the United States constitution was denied in *B. F. Goodrich Co. v. State,* 38 Wn.(2d) 663, 231 P.(2d) 325 * * * ;"

and the court rejected appellant's contention that the Commerce Clause required an apportionment by stating at 151 Wash. Dec. 200, 202, 316 P.(2d) 1099, 1101 (1957):

> "Appellant argues that the tax should be apportioned between interstate and local activities. There is no question of apportionment here. The tax is measured solely by appellant's local wholesale and retail activities. No part of the tax is at-

tributable to its manufacturing or other out-of-state activities. The sales are negotiated within the State of Washington, and the fact that delivery is made direct to the purchaser does not change the nature of the local transaction."

THE QUESTIONS ARE SUBSTANTIAL

A. The Question of Apportionment Is Substantial

If every state levied a tax such as the Washington business and occupation tax (a tax upon the privilege of engaging in business activities without regard to the extent to which those activities occur within the state) each interstate business would pay *double* the tax paid by its local competitors.

Manifestly, this is a result which the Commerce Clause of the United States Constitution was designed to prevent. As this Court stated in *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 256 (1938):

> "The multiplication of state taxes measured by the gross receipts from interstate transactions would spell the destruction of interstate commerce and renew the barriers to interstate trade which it was the object of the commerce clause to remove."

Furthermore, this is a tax on "gross" proceeds of sales. Washington is not prohibited constitutionally from raising the rate of the tax to whatever level it might desire. A double imposition of the present tax is burdensome on interstate commerce. If the rate were raised, a double tax might stop the flow of interstate commerce.

> "The immunities implicit in the commerce clause and the potential taxing power of the state can hardly be made to depend, in the world of prac-

> tical affairs, on the shifting incidence of the varying tax laws of the various states at a particular moment." *Freeman v. Hewit*, 329 U.S. 249, 256 (1946).

This is particularly significant when we note that the Legislature of the State of Washington has seen fit to increase the rate of the tax here in question by 60 % since its adoption in 1935.

Apportionment is necessary in order that local and interstate business will each pay this "privilege" tax in proportion to the value of the privilege conferred by the state. That this is a "privilege" tax is answered by the statute itself, which characterizes the tax as one "for the act or privilege of engaging in business activities." RCW 82.04.220. This interpretation has been affirmed by the Supreme Court of the State of Washington in *B. F. Goodrich Co. v. State*, 38 Wn.(2d) 663, 231 P.(2d) 325 (1951); *Bloxom v. Henneford*, 193 Wash. 540, 76 P.(2d) 586 (1938); and by this Court in *Gwin, White & Prince, Inc., v. Henneford*, 305 U.S. 434 (1939); *Puget Sound Stevedoring Co. v. Tax Commission*, 302 U.S. 90 (1937); and *Fisher's Blend Station v. Tax Commission*, 297 U.S. 650 (1936).

The tax in question is measured by gross receipts from interstate commerce where title passes and the goods are delivered to the buyer outside the state. This Court has sustained taxes measured by gross receipts from interstate transactions where those receipts were a fair measure of the privilege conferred by the taxing state. *American Manufacturing Co. v. St. Louis*, 250 U.S. 459 (1919); and *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250 (1938). But where interstate

commerce is responsible for a substantial portion of the receipts this Court has required an apportionment to limit the taxing state to the value of its privilege. *Central Greyhound Lines v. Mealey,* 334 U.S. 653 (1948); and *Bass, Ratcliff & Gretton, Ltd., v. State Tax Commission,* 266 U.S. 271 (1924).

Apportionment is required in the present case because:

> "The vice of the statute as applied to receipts from interstate sales is that the tax includes in its measure *without apportionment,* receipts derived from activities in interstate commerce * * *." *J. D. Adams Mfg. Co. v. Storen,* 304 U.S. 307, 311 (1938). (Emphasis supplied).

This Court has consistently condemned taxation of interstate business "without apportionment." The necessary implication is that an "apportioned" tax would be valid. Appellant contends that the tax here imposed by the State of Washington is the type of tax on interstate commerce which this Court has said requires apportionment. If not, the requirement of apportionment discussed in the decided cases is meaningless. This is a substantial constitutional question requiring plenary consideration of this case.

This case is not governed by *Field Enterprises, Inc., v. State of Washington,* 47 Wn.(2d) 852, 289 P.(2d) 1010 (1955); affirmed *per curiam* 352 U.S. 806 (1956), or *Norton Co. v. Department of Revenue,* 340 U.S. 534 (1951). In neither of those cases was the issue of apportionment before the Court. Neither Norton nor Field requested any relief other than complete immunity from the taxes in question. Nor is the appellant in

a position comparable to the taxpayer in *Department of Treasury v. Ingram-Richardson Mfg. Co.*, 313 U.S. 252 (1941), where the taxpayer failed to give the state an opportunity to apportion tax. Here, the Tax Commission, the Superior Court and the State Supreme Court have all refused to acknowledge the constitutional requirement of apportionment, although at every stage of the proceeding the appellant has urged the issue of apportionment and has presented facts from which an apportionment could be made. The Tax Commission had before it all the appellant's business records and the state courts had before them stipulated facts relating to the extent of the appellant's local activities as compared with all activities which contributed to the gross proceeds of sales involved. An examination of these factors demonstrates beyond any question that appellant's Washington activities contribute only a small proportion to the total proceeds of sales upon which the tax has been based.

The refusal of the Washington courts to require an apportionment in this case is based largely upon a misinterpretation of this Court's decision in *Norton Co. v. Department of Revenue*, 340 U.S. 534 (1951), and upon this Court's affirmance *per curiam* of *Field* Enterprises, *Inc., v. State of Washington*, 352 U.S. 806 (1956), which was based solely upon the *Norton* case. The *issue* in those cases was whether or not the states in question had authority to levy *any* tax at all. In the *Norton* and *Field* cases this Court found in the local retail outlet maintained by the taxpayer a sufficient "local incident" to bring the interstate transactions

within the taxing power of the state. But in every instance where an apportionment is required there is always a "local incident" to support the tax. This case begins with the issue that *Norton* and *Field* did not present; that is—does the *measure of the tax* fairly reflect the privilege conferred by the taxing state?

The Washington Supreme Court is mistaken in its characterization of the tax in question. In the course of the opinion below, *U. S. Steel Corporation v. State of Washington,* 151 Wash. Dec. 200, 202, 316 P.(2d) 1099, 1101 (1957), the Court states:

> "The tax is measured solely by appellant's local wholesale and retail activities."

Actually, RCW 82.04.220 specifically states:

> "Such tax shall be measured by the application of rates against * * * gross proceeds of sales * * *."

Appellant's business is a "unitary" one. Its eventual sales are the culmination of a whole series of activities commencing with the beginning of manufacture. In such a situation the gross proceeds of its sales are attributable in some measure to every phase of this "unitary" business. As the agreed facts in this case so clearly demonstrate, the overwhelming proportion of that unitary business is conducted outside the State of Washington.

Apportionment of taxes upon a "unitary" business engaged in interstate commerce was required by this Court in *Hans Rees' Sons v. North Carolina ex rel. Maxwell,* 283 U.S. 123, 133 (1931), where it is stated:

> "Undoubtedly, the enterprise of a corporation which manufactures and sells its manufactured

> product is ordinarily a unitary business, and all the factors in that enterprise are essential to the realization of profits. The difficulty of making an exact apportionment is apparent and hence, when the state has adopted a method not intrinsically arbitrary, it will be sustained until proof is offered of an unreasonable and arbitrary application in particular cases. But the fact that the corporate enterprise is a unitary one, in the sense that the ultimate gain is derived from the entire business, does not mean that for the purpose of taxation the activities which are conducted in different jurisdictions are to be regarded as 'component parts of a single unit' so that the entire net income may be taxed in one state regardless of the extent to which it may be derived from the conduct of the enterprise in another state."

The concept of the "unitary business" is just as applicable to gross receipts taxes as it is to income taxes. If every "local incident" were the occasion for a full imposition of tax, burdens on interstate commerce would occur with every state in which the unitary business might conduct some portion of its activities. The type of tax imposed is immaterial where there is shown a substantial adverse effect on interstate commerce. As this Court held in *Interstate Oil Pipeline Co. v. Stone,* 337 U.S. 662, 666 (1949):

> "* * * We are concerned with the practical operations of challenged state tax statutes, not with their descriptive labels."

Furthermore, the issue of apportionment is not answered by the traditional argument of the State of Washington that manufacturing and selling activities

may be segregated and the seller's state may tax manufacturing and the buyer's state may tax selling.

This case involves the manufacture of specialized iron and steel products and not all of the activities subsequent to manufacture occur within the State of Washington. Solicitation of Washington customers occurs in Washington and some other activities incidental to the operation of its one local office occur there, but all other activities incidental to inspecting, checking, and shipping, together with the acceptance of the orders in question, occur outside of the state. It has been agreed by the state that delivery and passage of title to all goods involved occurred at the points of shipment outside the State of Washington; and those activities will support a privilege tax imposed by the state of shipment. *Department of Treasury v. Wood Preserving Corp.*, 313 U.S. 62 (1941).

Moreover, the State of Washington imposes the same tax involved in this action to the full extent when it is the state in which such a shipment occurs. Assuming for the purposes of illustration that each state had Washington's business and occupation tax, the selling activity alone (without regard to the manufacturing activities of the unitary business) would be subject to tax both in the state of shipment and in the state where the solicitation of the sale occurs. Appellant respectfully submits that this is a risk of multiple taxation which the Constitution does not permit.

In conflicts between state taxes and the Commerce Clause this Court is faced with:

"* * * The double demand that interstate busi-

> ness shall pay its way, and that at the same time it shall not be burdened with cumulative exactions which are not similarly laid on local business." *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250, 258 (1938).

This is one of those cases where these historic demands can only be resolved by application of a proper apportionment formula. A failure to apportion the tax in this case may well result in a host of new taxes based on a "local incident" but levied without apportionment on gross receipts attributable to interstate activities. On the other hand, apportionment preserves the right of each state to that portion of the proceeds of interstate commerce which fairly reflect the value of the privilege conferred by that state.

Appellant respectfully submits that the results required by the Constitution can be reached only by this Court's plenary consideration of this case.

B. The Question of Discrimination Is Substantial

The Legislature of the State of Washington has adopted a taxing scheme in its business and occupation tax which deliberately discriminates against interstate commerce and in favor of local business, in violation of the Commerce Clause. As this Court stated in *Gwin, White & Prince, Inc., v. Henneford,* 305 U.S. 434, 438 (1939):

> " * * * under the commerce clause, in the absence of congressional action, state taxation, whatever its form, is precluded if it discriminates against interstate commerce * * *."

Washington does not manifest this discrimination

blatantly by a double tax payable to the State of Washington on interstate business, but rather by a cleverly contrived exemption feature which rewards those businesses which refrain from engaging in interstate commerce. *The exemption is lost only when the channels of interstate commerce are utilized.*

The State Legislature's intention to discriminate against interstate commerce is best demonstrated by reviewing the history of this exemption feature. The original Revenue Act, Laws of 1935, Chap. 180, §6, provides in part:

> "That persons taxable under paragraphs (a) [for extracting] or (b) [for manufacturing] of said section [4] shall not be taxable under paragraph (d) [for wholesaling] of said section with respect to making sales at wholesale of products extracted or manufactured within this state by such persons."

As a result a local manufacturer-wholesaler who was taxed locally on manufacturing did not pay the tax on wholesaling which was imposed upon those manufacturer-wholesalers who manufactured outside the state and shipped goods to purchasers within the state.

The discriminatory nature of the exemption was readily apparent to the Washington Supreme Court which held the business and occupation tax unconstitutional as to sales similar to those involved in this action, and stated in *Columbia Steel Co. v. State*, 30 Wn. (2d) 658, 662, 192 P.(2d) 976 (1948):

> "Regardless of the uncertainty on the question of what types of state taxation on interstate commerce are allowable, it may be definitely stated that

> any tax which places interstate commerce at a disadvantage in competition with local commerce is prohibited by the Federal constitution."

As a result of the *Columbia Steel* case the Legislature amended the exemption section so as to retain its discriminatory characteristics while erecting a facade of equal treatment of local and interstate business. Laws of 1950, Chap. 5, §2, reversed the language of the exemption section of the prior law to provide:

> "That persons taxable under paragraphs (c) [for retailing] or (e) [for wholesaling] of said section [4] shall not be taxable under paragraphs (a) [for extracting], (b) [for manufacturing], or (d)(2) [for wheat flour manufacturing] of said section with respect to extracting or manufacturing of the products so sold."

If every state had such a discriminatory exemption feature, interstate businesses would pay the full unapportioned tax on the privilege of engaging in business in each state in which its business occurred; whereas its local competitors (who might choose to manufacture and market within a single state) would pay the tax only once. The activities of the interstate business and the local business might be the same; but the tax impact would be different. Appellant, in its competition with local manufacturers, must overcome the advantage which the local industry enjoys by its proximity to the Washington market. Interstate commerce is without constitutional protection against this disadvantage in its competition with local industry, but the Constitution does protect interstate commerce against state taxation "whatever its form" which discriminates against it.

Washington's exemption feature is not an incentive for businesses to come to Washington to engage in manufacturing. If this were the purpose of the exemption it would be highly desirable to encourage local production for export. Under Washington's tax a manufacturer who ships outside the state in effect loses his exemption. Only the local manufacturer who produces for local consumption is favored.

This exemption feature recognizes that a duplication of this tax measured by *gross receipts* could be confiscatory. As a result local business (regardless of the extent of its activities) has been limited to one imposition of the tax. But no such consideration is given to interstate commerce which Washington taxes to the full extent. Unless this Court intervenes in this case, interstate commerce will be subjected to additional taxation in every state to which it reaches.

CONCLUSION

Appellant respectfully submits that Washington's blatant disregard of the requirements of the Commerce Clause as exemplified by the tax imposed in this case presents substantial constitutional questions requiring plenary consideration by this Court.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

UNITED STATES STEEL CORPORATION, *Appellant,* vs. THE STATE OF WASHINGTON, *Respondent.*	No. 33747 EN BANC October 31, 1957

This is an action to recover the business and occupation tax assessed against the plaintiff by the tax commission of the state of Washington. The tax was measured by the gross proceeds of its sales to Washington customers pursuant to the provisions of Title 82 of RCW.

The plaintiff is a New Jersey corporation. It does not manufacture any of its products in this state. About seventy-five percent of the goods it sells in Washington is purchased from other manufacturers outside of the state.

The plaintiff maintains a local sales office in Seattle, Washington, where an average of forty-two residents are employed. It sells at retail and wholesale to Washington customers. Most of the goods are ordered by the local office before or while they are in the process of manufacture. They are priced at the place of manufacture and shipped f.o.b. direct to the purchaser under purchase contracts which pass title to the buyers at the place of shipment.

The local sales force contacts prospective purchasers; takes their orders; passes upon the credit of purchasers, although, in rare instances, the plaintiff's San Francisco office gives final approval; forwards the orders to the manufacturers for confirmation, after which it sends a written acceptance of the order to the custo-

mers; keeps all of the records of the sales transactions; and handles billing and collections, maintaining a bank account for that purpose. Customer complaints are investigated by the local office, and recommendations for settlement are made, which are finally approved by the San Francisco office.

No new question is presented by the plaintiff on its appeal.

Its contention that the business and occupation tax violates Art. I, §8, of the United States constitution was denied in *B. F. Goodrich Co. v. State*, 38 Wn.(2d) 633, 231 P.(2d) 325, wherein we said:

> "All those who sell at wholesale within this state are now taxed equally upon that activity regardless of whether they manufacture in Washington or elsewhere. Because some other state might exercise its undoubted right to tax the privilege of manufacture with respect to goods ultimately sold in Washington (citing cases), this state need not forego its right to tax the business of selling those goods. Each state must derive its revenues from what goes on within its own borders. And if Washington's statute exempts local manufacturers from paying their tax as manufacturers, providing they also pay it as sellers, that, as appellant admits, can be of no concern to one who manufacturers out of the state."

From the record, it appears that the sales activities of the Seattle office of appellant are decisive factors in establishing and holding the local market for its goods. Thus, it is subject to the tax. *Field Enterprises Inc. v. State*, 47 Wn.(2d) 852, 289 P.(2d) 1010 (affirmed, 352 U.S. 806, 1 L.ed.(2d) 39, 77 S.Ct. 55).

Appellant argues that the tax should be apportioned between interstate and local activities. There is no question of apportionment here. The tax is measured solely by appellant's local wholesale and retail

activities. No part of the tax is attributable to its manufacture or other out-of-state activities. The sales are negotiated within the state of Washington, and the fact that delivery is made direct to the purchaser does not change the nature of the local transaction. *Norton Co. v. Department of Revenue of the State of Illinois,* 340 U.S. 534, 95 L.ed. 517, 71 S.Ct. 377; *Field Enterprises Inc. v. State, supra.*

The judgment is affirmed.

MALLERY, J.

We Concur:

HILL, C. J.

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DONWORTH, J.

.....

FINLEY, J.

.....

WEAVER, J.

.....

ROSELLINI, J.

.....

OTT, J.

.....

FOSTER, J.

.....

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

UNITED STATES STEEL CORPORATION, a New Jersey corporation, *Plaintiff*, vs. STATE OF WASHINGTON, *Defendant*.	No. 27761

MEMORANDUM OPINION

This is an action to recover business and occupation taxes levied under the provision of RCW 82.04.220. The matter was tried upon an agreed statement of facts, to which reference is made for particularity. In general, the case concerns iron and steel products sold upon orders received by plaintiff's Seattle salesmen, and shipped to Washington customers f.o.b. points of origin without the state. "Approximately 25% of the sales involved iron and steel products manufactured by the taxpayer in the State of California. The remaining approximately 75% of the sales involved iron and steel products which were purchased by the taxpayer in states other than the State of Washington from manufacturers located therein and which were not manufactured from the taxpayer's own materials or ingredients." (Supplemental Agreed Statement of Facts.)

The case at bar is ruled by *B. F. Goodrich Co. v. State*, 38 Wn.(2d) 663, and *Field Enterprises ,Inc., v. State*, No. 33120, decided November 17, 1955. Each of the foregoing cases was a unanimous *en banc* decision. The facts in the instant case present no legally significant difference from the facts of the *Goodrich* and *Field* cases *supra*. The defendant will prevail.

/s/ RAYMOND W. CLIFFORD
Judge

December 5, 1955

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

UNITED STATES STEEL CORPORATION, a New Jersey Corporation, *Appellant*, vs. THE STATE OF WASHINGTON, *Respondent*.	Tuesday December 3, 1957 No. 33747 Thurston County No. 27761

JUDGMENT

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Thurston County, and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, it is now, on this 3rd day of December, A.D. 1957, on motion of John J. O'Connell, Esquire, of counsel for respondent, considered, adjudged and decreed, that the judgment of said Superior Court be, and the same is hereby affirmed with costs; and that the said State of Washington have and recover of and from the said United States Steel Corporation, a New Jersey corporation, and from Hartford Accident and Indemnity Company, surety to the extent of $200.00, the costs of this action taxed and allowed at Two Hundred thirty-six and 62/100 ($236.62) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Entered of record in Journal 41
at page 692 in the
Office of the Clerk of the
Supreme Court.

APPENDIX D

THE STATUTE

Revised Code of Washington

82.04.220 *Business and occupation tax imposed.* There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

* * *

82.04.240 *Tax on manufacturers.* Upon every person except persons taxable under subsection (2) of RCW 82.04.260[1] engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of one-quarter of one percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

82.04.250 *Tax on retailers.* Upon every person engaging within this state in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of one-quarter of one percent.

* * *

82.04.270 *Tax on wholesalers.* Upon every person except person taxable under subsection (1) of RCW

[1] This subsection deals with the manufacture of flour.

82.04.260[2] engaging within this State in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent.

* * *

82.04.295 *Temporary surtax imposed.* From and after the first day of November, 1951, until the thirtieth day of April, 1953[3], there is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed by this chapter and as a temporary increase thereof, a surtax in the amount of twenty percent of the tax payable under this chapter.

* * *

82.04.430 *Deductions enumerated.* In computing tax there may be deducted from the measure of tax the following items:

* * *

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

* * *

82.04.440 *Persons taxable on multiple activities.* Every person engaged in activities which are within the purview of the provisions of two or more of section RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in: *Provided,* that persons taxable under RCW 82.04.250 or 82.04.270 shall not be taxable under RCW 82.04.230, 82.04.240, or subsection (2) of RCW 82.04.-

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[2] This subsection deals with wholesalers of grain.

[3] Temporary surtax continuously extended, increased, and made permanent at the rate of sixty percent by Laws of 1957, Chap. 279, §5; RCW 82.04.296 (1957).

260 with respect to extracting or manufacturing of the products sold, and that persons taxable under RCW 82.04.240 shall not be taxable under RCW 82.04.230 with respect to extracting the ingredients of the products so manufactured.